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Chairman: Mr. LAMPTEY (Ghana)

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The meeting was called to order at 3.40 p.m.

AGENDA ITEM 141: QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE (continued) (A/49/22; A/C.6/49/L.4)

1. Mr. OWADA (Japan) said that, given the proliferation of peace-keeping operations conducted in various areas of the world by the United Nations, the international community must create an environment in which United Nations and associated personnel could discharge their mandates in total safety. Japan had a long history of cooperation with United Nations peace-keeping operations, mainly through financial contributions, but it had recently enacted new legislation enabling it to contribute personnel. For example, it had sent troop contingents and military observers of its self-defence forces to join the United Nations Transitional Authority in Cambodia (UNTAC), thus contributing to the operation's success. At present a Japanese troop contingent and five officers were participating in the operation in Mozambique - ONUMOZ. Furthermore, some 400 Japanese personnel had been sent to Zaire to provide humanitarian assistance to refugees from Rwanda. Japan had also sent election observers to several other countries to help with their democratization efforts.

2. But Japan's enthusiasm for the role played by United Nations peace-keeping operations in the restoration of peace in various areas was tempered by the knowledge that as the operations had proliferated the number of casualties among their personnel had also increased. Particularly disturbing in that respect was the increasing incidence of deliberate and unprovoked attacks on United Nations personnel. Since 1948 more than a thousand United Nations peace-keepers had been killed in the line of duty, and more than a third of the casualties had occurred since the beginning of 1993. In addition, an even larger number of civilian personnel, most of them engaged in humanitarian work, had been targets of senseless and vicious attacks. There could be no doubt that, unless the problem was addressed seriously and the necessary measures were taken to ensure the security of United Nations peace-keepers, they would be unable to discharge their responsibilities effectively and might very well lose the support of the international community. New Zealand and Ukraine should thus be commended for their 1993 request to have the present item included in the agenda of the forty-ninth session. The negotiating text of a draft convention had now been produced, and Japan had participated actively in the work in the conviction that the convention would serve the interests of the whole international community. Nevertheless, although the revised text (A/C.6/49/L.4) was fairly balanced, several of its aspects needed further examination.

3. Firstly, with regard to the definitions contained in article 1 and the scope of application in article 2, Japan had consistently held the view that since the Convention included penal clauses it was essential for the definitions and the scope of application to be precise. The categories of operation and personnel covered by the convention must be clearly defined so that, in accordance with the relevant provisions of article 2, the convention could not be applied when the law of international armed conflict applied. While

article 2, paragraph 2, was useful in that it avoided the risk of concurrent application of the convention and the law of international armed conflict, it might be feared that in practice the paragraph would not be sufficient to avoid concurrent application. The draft texts should be examined with specific examples in mind, and consideration must be given to the types of personnel which should be covered, the types of operation which States would be expected to participate in, and the types of activity which would be conducted under the convention.

4. During the discussions in the Working Group Japan had stressed that all United Nations peace-keeping operations conducted in dangerous situations and all their personnel should be covered by the convention. In particular, inasmuch as personnel involved in humanitarian assistance operations very often worked in intrinsically dangerous situations and were vulnerable, they were in even greater need of protection than peace-keepers as such. According to the existing language of article 1, paragraph (c) (ii), in order for a United Nations-related humanitarian operation to be covered by the convention, the Security Council or the General Assembly must declare that there existed an exceptional risk to the safety of the personnel concerned. However, there was no guarantee that such a declaration would be made expeditiously and in time. By contrast, any operation whose purpose was the maintenance or restoration of international peace and security was automatically covered by the convention irrespective of the danger to which the participants were exposed. Japan strongly believed that, as a matter of principle, there should be no differentiation in treatment between peace-keeping and humanitarian operations. That view was shared by a number of delegations as well as by the humanitarian agencies concerned. Japan intended therefore to continue to urge that a way must be found of ensuring that the personnel in question, particularly humanitarian assistance personnel working in dangerous situations, should be specifically protected under the convention.

5. Secondly, the Japanese delegation interpreted article 5 of the draft convention, which provided that a transit State shall "facilitate the unimpeded transit" of United Nations and associated personnel, as referring to the requirement of cooperation by the transit State. In that sense it was to be hoped that the phrase "cooperate in facilitating the transit" would be used.

6. Thirdly, Japan had consistently stressed that the convention must be effective and easy to apply. United Nations personnel often operated in areas where the local authorities were not fully in control and were not able to take the necessary safety measures as called for in the convention. For that reason the Japanese delegation attached great importance to article 7, paragraph 3, which required States parties to cooperate with the United Nations and other States parties in the implementation of the convention. If a State party was unable to bring to justice those responsible for an attack on United Nations personnel or to ensure the safety of such personnel, it could seek the cooperation of the peace-keeping operation in the area. Japan hoped that the paragraph would facilitate the satisfactory implementation of the convention.

7. Fourthly, article 9, paragraph 1 (e), included among the crimes covered by the convention "an act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack". The provision clearly could not be intended to extend to an accomplice in organizing or ordering an attack in cases where the principal offender stopped short even of an attempt to commit an attack as stipulated in paragraph 1 (d). Moreover, there was no provision in the Japanese Criminal Code which referred specifically to "organizing or ordering" as a punishable crime. Depending on how those terms were defined, Japan might have to enact new legislation to bring its current legislation into line with the convention. It would be better to leave such details of implementation of the convention to the discretion of the States parties, which could find the best way of dealing with the situation in the context of their own national criminal law.

8. With regard to article 10, the Japanese delegation believed that in the interest of effective implementation of the convention the States parties should be able to establish their own jurisdiction not only when a crime was committed in their territory or when the alleged offender was one of their nationals but also in the cases covered by paragraphs 2 and 4. Japan supported in principle the establishment of universal jurisdiction. However, in the cases covered by paragraph 4 a serious legal problem could arise in that the obligation of a State to establish its jurisdiction under paragraph 4 would be made dependent on the sovereign will of another State acting under paragraph 2. Since all the States parties involved could choose to establish their jurisdiction but were not required to do so, the constitutional requirement for a State to maintain the utmost clarity in matters pertaining to the application of criminal law could be put in jeopardy if the State in question was required, under paragraph 4, to establish its jurisdiction on such an ambiguous basis as paragraph 2.

9. Subject to those comments, Japan was ready to join other States in producing the final text of a draft convention, which should be adopted as soon as possible.

10. Mr. STANCZYK (Poland) said that Poland had participated actively in United Nations peace-keeping and other operations by providing both military personnel and civilian specialists and experts. Poland had always seen that participation as its duty to the international community and its contribution to fulfilling the main purpose of the United Nations, which was to maintain international peace and security. At the same time, as an active participant in the activities in question, Poland was extremely concerned at the growing number of violent attacks on United Nations and associated personnel. More and more often, such attacks resulted in death or serious injury, and his Government was deeply concerned at their increase. It strongly condemned that heinous form of international terrorism and recognized the need for concerted action to enhance the safety and security of United Nations and associated personnel.

11. For that reason, his country had welcomed the establishment of the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the

Safety and Security of United Nations and Associated Personnel and had participated actively in its work. For that reason, too, it had presented a proposal concerning the future convention's first two articles, dealing with its scope of application and definitions. Those matters were, in fact, of crucial importance. His country was pleased at the results obtained by the Ad Hoc Committee. The revised negotiating text developed by the Committee provided a good basis for further work within the Working Group and for elaborating the final text of the draft convention (A/C.6/49/L.4) under consideration by the Sixth Committee.

12. The future convention should have the widest possible scope of application. Poland supported the broad definitions given for such terms as "United Nations personnel" and "associated personnel", and, in particular, was pleased to note that the latter term also included persons deployed by an intergovernmental organization or a humanitarian non-governmental organization. Furthermore, although the term "United Nations operation" had been broadly defined, the Working Group had been very careful to distinguish between that term as used in the draft and a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter. The provisions in articles 1 and 2 of the draft convention should ensure its effective implementation and the fulfilment of its function of protecting United Nations and associated personnel.

13. Furthermore, his country found the draft provisions concerning jurisdiction, prosecution and extradition to be fully acceptable, as they were in keeping with the provisions of previously concluded anti-terrorist conventions that were now well established in the practice of States.

14. Given the urgency of adopting the convention and the need to maintain momentum, his country fully supported the Working Group's recommendation that the Sixth Committee should consider the text of the draft convention "with a view to its adoption". His delegation hoped that the Committee and the plenary Assembly would accept that recommendation.

15. Mr. XU Guangjian (China), while praising the Working Group and, in particular, the work of its Chairman, said that his delegation still had some reservations about the draft convention that it had adopted.

16. In recent years, with the expansion of United Nations peace-keeping operations, the number of casualties among the personnel of those operations had aroused increasing concern in various countries, including his own, which was ready to seek practical and effective means of protecting such personnel. His Government had endorsed the elaboration of a convention on the question as early as 1993, and had participated actively and conscientiously in the drafting process.

17. His delegation believed that the drafting of the proposed convention could not be divorced from the actual experience of peace-keeping operations in recent years. Everyone agreed that the drastically increased number of United Nations peace-keeping operations had been useful in preventing conflicts and promoting

the settlement of disputes; however, frustrations abounded. Since 1993, peace-keeping operations had been experiencing very difficult conditions attributable to many complex and sensitive elements, which had led to universal concern within the international community. Faced with those changes in the peace-keeping operations, his delegation had repeatedly asserted that, in elaborating the proposed convention, consideration should be given to all relevant elements. The purpose of such a convention was to provide effective and efficient protection to United Nations peace-keeping personnel. For that reason, the universality of the convention merited careful attention, since the convention should reflect the practice of various countries and be acceptable to them.

18. Accordingly, his delegation had always maintained that the scope of application of the convention should be strictly and clearly defined, and it could not agree to the inappropriate expansion of that scope. In the view of his country, peace-keeping operations should essentially mean operations aimed at maintaining international peace and security. The consent and cooperation of the State or the parties concerned should be ensured. The operations should be under the command and control of the United Nations. Yet the current draft (A/C.6/49/L.4) did not meet those requirements.

19. His delegation believed that the scope of the convention should be limited to operations authorized by the Security Council and agreed upon by the State concerned. The tendency in recent years for peace-keeping operations to become involved in the internal affairs of States had aroused concern among many countries. The convention should therefore reiterate the purposes and principles of the Charter of the United Nations and should reaffirm the principles of State sovereignty and non-interference in the internal affairs of States. That point should be fully reflected in the draft convention.

20. As an alternative, his delegation had also suggested that the scope of the convention might be limited to "peace-keeping operations under the command and control of the United Nations". Those were in fact the only operations that could objectively and fairly fulfil their mandates in the interest of the United Nations and the international community. In his report to the Security Council in March 1994 entitled "Improving the capacity of the United Nations for peace-keeping", the Secretary-General had pointed out that peace-keeping operations under the command and control of the United Nations would "carry out the mandate entrusted to them by the Security Council objectively and fairly, representing the political will of the international community as a whole rather than any partial interest". Therefore, he had continued, "the members of a peace-keeping operation must be under the exclusive operational command of the United Nations and must accept no orders from any outside agency in respect of their United Nations duties". However, the phrase in article 1, subparagraph (c), of the current draft, "under United Nations authority and control", was not the same as "under the command and control of the United Nations", which was why his delegation had reservations there as well.

21. For the States parties to fulfil their obligations under the convention effectively, the United Nations and associated personnel protected by the convention must be defined clearly. The definitions in article 1,

subparagraph (b) (ii) and (iii), were imprecise and a bit too broad, which meant that it would be difficult in practice for the host country to provide effective protection. For that reason, his country reserved its position on those provisions.

22. Apparently, the existing draft was not satisfactory to all. As to whether it should be adopted at the current session of the General Assembly, his delegation thought that it would be appropriate to wait until delegations' comments had been heard before taking a decision.

23. Mr. ROSENSTOCK (United States of America) said that the draft convention dealing with the safety and security of United Nations and associated personnel was an important text that filled a gap in international law. That a convention of such significance could have been negotiated in less than a year was a testament to the importance that Member States attached to the initiative.

24. The proposed convention provided for situations not covered by the laws of war. It was appropriate that its scope of application included non-combat peace-keeping operations and operations for purposes other than maintaining peace where the Security Council or General Assembly had declared that there was an exceptional risk for the safety of the personnel.

25. The subject in question was complex and many difficult questions had been raised during the negotiations. No delegation had got all it had wanted. From his delegation's point of view, the text could still be improved. None the less, given the pressing need to provide protection to United Nations and associated personnel, it would not be reasonable to wait until a "perfect" solution had been found to adopt the document. Further negotiation would not, in the view of his delegation, lead to better results, and it therefore urged the Committee to recommend that the plenary Assembly should adopt the draft and open the convention for signature.

26. Mr. PERERA (Sri Lanka) said that the Organization had invested unprecedented political, financial and human capital in peace-keeping operations which were becoming increasingly complex, dangerous and expensive. That was why it was necessary to devise a new instrument to supplement the measures of protection for United Nations and associated personnel already provided by existing conventions.

27. The draft convention dealing with the safety and security of United Nations and associated personnel (A/C.6/49/L.4) followed the "extradite or prosecute" regime which formed the basis of existing international conventions dealing with terrorism. Draft articles 13 to 15 required a State party in whose territory an alleged offender was present either to extradite that offender or to submit the case to its competent authorities for the purpose of prosecution. Draft article 10 - on the establishment of jurisdiction by States parties where the crime was committed in their territory, or where the offender had their nationality, and on the discretionary exercise of such jurisdiction on the basis of the nationality of the victim or where the crime was directed against the State party itself - was consistent with established principles of criminal

jurisprudence. The mandatory requirement of establishing jurisdiction where an alleged offender was present in the territory of a State party without having any other link with the crime was also essential to ensure that the alleged offender did not enjoy a safe haven after committing a crime in a third country. Those provisions were consistent with legal obligations under existing instruments and provided a sound legal basis for protecting United Nations personnel.

28. His delegation also noted that, under draft article 2, the convention did not apply to United Nations operations authorized by the Security Council as an enforcement action under Chapter VII of the Charter; in that context, personnel were engaged as combatants against organized armed forces and the law of international armed conflicts applied. That would avoid the creation of a dual regime in respect of enforcement operations undertaken by the United Nations. Draft articles 6 to 8, dealing with the rights and obligations of United Nations personnel and of host States, were, by and large, consistent with existing instruments such as the Convention on the Privileges and Immunities of the United Nations and the status-of-forces agreements.

29. Draft article 1 encompassed the most complex set of issues raised by the text under consideration. His delegation wished to place on record its understanding on those issues. The consent of the host State was an essential element in a decision to undertake any United Nations operation. That element had found expression in the preamble to the draft text. However, the question of consent was one that had to be addressed at the time of mandating a specific operation. His delegation therefore expected that the competent United Nations organs concerned would take into account the important element of the consent of the host State before mandating a United Nations operation of the type envisaged under the proposed convention. His delegation further noted that article 20, subparagraph (b), preserved the rights and obligations of States, in conformity with the Charter, regarding consent to the entry of persons into their territories.

30. The definition of the term "United Nations personnel" in draft article 1, subparagraph (a), covered specific categories of persons who could be identified in the context of existing definitions such as those in the Convention on the Privileges and Immunities of the United Nations. However, the definition of the term "associated personnel" in draft article 1, subparagraph (b), gave rise to an element of uncertainty. It raised the problem of the degree of responsibility and accountability to the United Nations of persons deployed by non-governmental organizations. Although that deployment was to take place under an agreement with the Secretary-General, the degree of actual authority and control exercised by the United Nations over such personnel was a matter of crucial importance. By attempting to cover persons who did not come under the direct authority and control of the Secretary-General, the scope of the convention might be widened to such an extent as to give rise to difficulties in its implementation.

31. On the definition of the term "United Nations operation" in draft article 1, subparagraph (c), his delegation hoped that it would cover only

operations conducted under United Nations command and control. It noted that the existing text of that definition included the words "United Nations authority and control" and was an improvement on the earlier text. His delegation remained concerned, however, at the disturbing practice of bypassing the command and control and the political direction of the United Nations in certain peace-keeping operations, which had led to the blurring of the distinction between United Nations peace-keeping efforts and other military operations. His delegation's understanding of the current formulation of that draft article was that only operations which were fully accountable to the United Nations and conducted under its political direction and control would be covered by the proposed convention. While recognizing that the revised negotiating text represented a delicate compromise, his delegation was ready to join a consensus to commend the draft for consideration by Member States.

32. Mrs. TSONEVA (Bulgaria) said that her country attached considerable importance to the elaboration of a draft convention on the safety of United Nations and associated personnel, which should be well balanced and comprise all elements of the right of protection in compliance with the universally recognized principles and norms of criminal law. Her delegation considered that the scope of the draft convention being considered by the Sixth Committee should be very broad and that it should provide protection to all personnel engaged in United Nations operations or conducting activities directly related to the mandate of such operations. There should be no gradation of the risk to which personnel were exposed during such operations. The personnel of humanitarian organizations were entitled to the same degree of protection and safety as United Nations personnel.

33. With respect to the types of operation to which the convention would apply, her delegation considered that the proposed text rightly focused on peace-keeping operations, while operations conducted in pursuance of Chapter VII of the Charter should continue to be regulated by the principles and norms of international humanitarian law. The precise identification of the organs determining the mandate of the operations included in the scope of the convention was a proper approach which would contribute to the clarity of the text and eliminate the risk of future disputes regarding that issue. The inclusion of the term "exceptional risk" as an element determining the type of operations to which the convention should apply would lead to a certain restriction of the right of protection and to potential difficulties due to the lack of precise criteria defining the term. In a spirit of compromise, her delegation was, however, willing to accept the text in its current form.

34. Her delegation considered that it was in line with the objectives of the convention that each State contributing personnel to a United Nations operation should have the right to withdraw such personnel under certain conditions. The entitlement to appropriate compensation was an essential part of the right of protection under any criminal law system, and a solution could be found to that problem.

35. The provisions of the draft convention regarding the right of self-defence, designed to provide maximum safety to United Nations personnel, were well

balanced. They should be interpreted in the context of the convention in order to avoid any ambiguity and the risk of possible disputes in the future.

36. The prosecution of persons alleged to have committed attacks against United Nations personnel was equally important. The imposition of a just punishment acted as a deterrent with regard to nationals of the host State. The convention provided for prosecutions to be brought consistently by stipulating the duty of active participation on the part of host States. The way in which issues connected with the prosecution of alleged offenders were settled under draft article 10, concerning extradition and legal assistance provided by States parties, was satisfactory.

37. Bulgaria understood the positions of the different States on various contentious issues in the convention. The guiding principle should be the urgent need for the elaboration of an international legal instrument providing the best possible protection to personnel contributed by States for United Nations operations. Her delegation called upon all States to spare no effort to ensure the endorsement and adoption of the draft convention by the Sixth Committee, and subsequently by the General Assembly, so that it would be opened for signature during the Assembly's forty-ninth session.

38. Ms. ARIFFIN (Malaysia) said that her country, which contributed troops to a number of United Nations peace-keeping operations, shared the concern of many States at the number of deaths and casualties among those involved in peace-keeping activities. The statistics were alarming: in 1993 201 peace-keeping personnel had been killed, and in 1994, 126 personnel had already been killed up to the end of October. It was therefore her delegation's hope that the adoption of a convention on the safety of United Nations and associated personnel would help to put an end to that unacceptable state of affairs. At the very least even at the current stage the draft convention sent a signal that the international community would not tolerate acts of violence deliberately targeted at United Nations and associated personnel.

39. Her delegation concurred with the New Zealand delegation that the convention should cover those persons most in need of protection. Accordingly she welcomed the extension of the protection provided by the convention to persons who, while not belonging to the United Nations, were closely associated with peace-keeping operations.

40. Notwithstanding the shortcomings noted by some delegations, her delegation was satisfied with the draft convention. What was important - indeed what was the fundamental objective of the convention - was to improve the safety of those who were involved in United Nations peace-keeping operations under increasingly difficult and hazardous conditions. That was precisely the intention of the draft convention, which made it the duty of States parties to enact laws to establish jurisdiction over persons who committed the crimes enumerated in draft article 9. Equally important, in order to ensure that the alleged offenders did not escape justice, it imposed an obligation on States parties either to try such offenders or to extradite them. Her delegation was happy to note that

great care had been taken in the draft convention to safeguard the rights of all parties.

41. In the knowledge that a legal instrument was not the sole answer to the problem, her delegation called for political and other measures to be considered in other bodies of the United Nations. She trusted that the Sixth Committee and the General Assembly would adopt the draft convention at the current session.

42. Mr. Young Won KIM (Republic of Korea) welcomed the broadening of the scope of the convention to the personnel of humanitarian non-governmental organizations. In view of the ever-expanding role of NGOs in United Nations activities, particularly in the field of humanitarian assistance, the amendments to articles 1 and 2 of the draft were fully justified and would be extremely useful in broadening the base of NGO participation in United Nations operations.

43. With regard to the definition of a United Nations organization, his delegation was among those that preferred that operations should not be strictly limited to those authorized by the Security Council. Accordingly he welcomed the changes to the wording of article 1 (c).

44. Similarly, the wording of article 9, which defined crimes against United Nations and associated personnel, was fully satisfactory to his delegation.

45. The provisions on extradition and mutual legal assistance were basically in line with those of other international instruments. They were an integral part of securing effective implementation of the convention.

46. Lastly, his delegation wished to convey its concern at the alarming number of casualties among United Nations and associated personnel. It was of supreme importance to provide the safest possible conditions for those courageous men and women, failing which the costs of humanitarian and peace-keeping operations might ultimately become too high in terms of human lives. Accordingly his delegation sincerely hoped to see the convention adopted in the near future and trusted that the international community would do its utmost to effect its early entry into force.

47. Mr. ORDZHONIKIDZE (Russian Federation) said that the contribution made by Russia to the formulation of the draft convention on the safety of United Nations and associated personnel indicated its great interest in the speedy establishment of reliable guarantees for the protection of those involved in United Nations operations. The draft convention was a unified mechanism, encompassing a series of closely interwoven links. Some elements had already been employed in other areas of international cooperation: for example, questions relating to proceedings against individuals suspected of having committed crimes against various categories of personnel involved in United Nations operations. The main point was to ensure certain punishment on the basis of the principle of universal criminal jurisdiction. The draft convention also had innovative aspects. Thus, the concept of United Nations operations - in particular for the purpose of maintaining or restoring international peace and security - was set forth for the first time in a convention, as were the

categories of staff involved in such operations. There was a dividing line between the scope of the convention and what was commonly termed the laws of war. Further, in the specific area of peacemaking, the draft reflected a successful and appropriate attempt to establish the bases of contemporary humanitarian law permitting civilized behaviour even in situations of armed conflict.

48. The accomplishment was considerable. Nevertheless, the draft represented only an early step towards the establishment of universal bases of international law relating to peacemaking. The document reflected the highly divergent manner in which States viewed the problem. It was undoubtedly the product of its time, the result of compromise by various groups of States. The future would reveal its positive aspects as well as its shortcomings. But the text set out approaches that were common to all States and opened the way to further legal instruments in that area. The future convention might well become a model for the protection of personnel involved in peace-keeping operations conducted under the authority of regional organizations.

49. The convention had a further aim, that of translating into domestic law internationally recognized criteria on the protection of peace-keeping personnel, thus establishing conditions for the harmonization and unification of national approaches. The largest possible number of States should now be encouraged to accede to the convention. That would make it possible to begin its implementation and underpin United Nations operations with firm legal guarantees, the scope of which would continue to expand. It was to be hoped that its entry into force would give a serious warning to those responsible for attacks on United Nations peace-keeping personnel and those who hindered peace-keeping and peacemaking.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued) (A/C.6/49/L.5 and L.6)

50. The CHAIRMAN said that the Republic of Moldova had joined the sponsors of draft resolution A/C.6/49/L.5, and that Ireland, Panama and Spain had joined the sponsors of draft resolution A/C.6/49/L.6.

The meeting rose at 4.50 p.m.